

**UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS**

CLIFFORD GATELY,

Plaintiff

V.

CONVERGENT OUTSOURCING,
INC.,

Defendant

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)

) Civil Action No.:

)

COMPLAINT AND DEMAND FOR

) JURY TRIAL

)

) (Unlawful Debt Collection Practices)

COMPLAINT

CLIFFORD GATELY (“Plaintiff”), by and through his attorneys, KIMMEL & SILVERMAN, P.C., allege the following against CONVERGENT OUTSOURCING, INC. (“Defendant”):

INTRODUCTION

1. Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA").

JURISDICTION AND VENUE

2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states that such actions may be brought and heard before “any appropriate United States district court without regard to the amount in controversy,” and 28

1 U.S.C. § 1331 grants this court original jurisdiction of all civil actions arising
2 under the laws of the United States.

3
4 3. Defendant conducts business in the Commonwealth of Massachusetts
5 and therefore, personal jurisdiction is established.

6 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).

7
8 **PARTIES**

9 5. Plaintiff is a natural person residing in Beverly, Massachusetts 01915.

10 6. Plaintiff is a “consumer” as that term is defined by 15 U.S.C. §
11 1692a(3).

12 7. Defendant is a debt collection company with its principal place of
13 business located at 800 South West 39th Street, Renton, Washington 98057.

14 8. Defendant is a “debt collector” as that term is defined by 15 U.S.C. §
15 1692a(6), and sought to collect a consumer debt from Plaintiff.

16 9. Defendant acted through its agents, employees, officers, members,
17 directors, heirs, successors, assigns, principals, trustees, sureties, subrogees,
18 representatives, and insurers.

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21 **FACTUAL ALLEGATIONS**

22 10. At all relevant times, Defendant was attempting to collect an alleged
23 consumer debt and contacted Plaintiff in its attempts to collect that debt.

24 11. The alleged debt at issue, a T-Mobile, USA personal cellular
25

1 telephone account, arose out of transactions, which were primarily for personal,
2 family, or household purposes.

3
4 12. Plaintiff never incurred any debt in connection with a business or
5 commercial activities, and therefore, if truly an obligation owed by him could have
6 only arisen from financial obligation for primarily personal, family, or household
7 purposes.

8
9 13. Beginning in or about November 2014, and continuing through
10 January 2015, Defendant placed repeated telephone calls to Plaintiff on his cellular
11 telephone in its attempts to collect the alleged debt.

12
13 14. Defendant contacted Plaintiff, on average, two (2) to four (4) times a
14 day.

15 15. Upon initial communication, Defendant demanded payment of
16 \$174.76.

17
18 16. Plaintiff, without hesitation, informed Defendant that he disputed the
19 debt, refused to make payment until verification was presented, and directed
20 Defendant to send any information in regards to the debt to you in the mail.

21 17. Also, Plaintiff instructed Defendant to stop calling him.

22
23 18. Defendant, however, never updated its records to comply with
24 Plaintiff's instructions.

25 19. Further, Defendant never provided Plaintiff verification, but instead,

1 continued to call him seeking and demanding payment of the dispute debt.

2 20. Lastly, in addition to continuing to call, Defendant contacted Plaintiff
3 at times when it was inconvenient for him to receive collection calls.
4

5 21. Specifically, Defendant called Plaintiff after 9:00 p.m., which is per
6 se an inconvenient time to receive collection calls.

7 22. Defendant's actions as described herein were made with the intent to
8 harass, abuse, deceive, and act unfairly towards Plaintiff.
9

10 **DEFENDANT VIOLATED THE**
11 **FAIR DEBT COLLECTION PRACTICES ACT**

12 **COUNT I**

13 23. Defendant's conduct, as detailed in the preceding paragraphs, violated
14 15 U.S.C. § 1692c(a)(1).
15

- 16 a. A debt collector violates § 1692c(a)(1) of the FDCPA by
17 communicating with a consumer at any unusual time or place
18 or time or place known or which should be known to be
19 inconvenient to the consumer. In absence of knowledge of
20 circumstances to the contrary, a debt collector shall assume that
21 the convenient time for communication with a consumer is after
22 8 o' clock antemeridian and before 9 o' clock postmeridian,
23 local time at the consumer's location.
24
25

- 1 b. Here, Defendant violated § 1692c(a)(1) of the FDCPA by
2 calling Plaintiff after 9 o'clock postmeridian.

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4 **COUNT II**

5 24. Defendant's conduct, as detailed in the preceding paragraphs, violated
6 15 U.S.C. §§ 1692d and 1692d(5)

- 7 a. A debt collector violates § 1692d of the FDCPA by engaging in
8 any conduct the natural consequence of which is to harass,
9 oppress, or abuse any person in connection with the collection of
10 a debt.
11
12 b. Section 1692d(5) of the FDCPA prohibits a debt collector from
13 causing a telephone to ring or engaging any person in telephone
14 conversation repeatedly or continuously with intent to annoy,
15 abuse, or harass any person at the called number.
16
17 c. Here, Defendant violated §§ 1692d and 1692d(5) of the
18 FDCPA by calling Plaintiff, on average, two (2) to four (4)
19 times a day, as well as continuing to call him after being
20 advised to stop calling him as well as that he disputed the debt.
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COUNT III

25. Defendant's conduct, as detailed in the preceding paragraphs, violated 15 U.S.C. § 1692f.

a. A debt collector violates § 1692f of the FDCPA by using unfair or unconscionable means to collect or attempt to collect any debt.

b. Here, Defendant violated § 1692f of the FDCPA engaging in other unfair and unconscionable debt collection practices, including failing to update its records to restrict calls to Plaintiff's cellular telephone after being told to stop calling as well as failing to provide Plaintiff with documentation substantiating the alleged debt.

WHEREFORE, Plaintiff, CLIFFORD GATELY, respectfully prays for a judgment as follows:

a. All actual damages suffered pursuant to 15 U.S.C. §1692k(a)(1);

b. Statutory damages of \$1,000.00 for the violation of the FDCPA pursuant to 15 U.S.C. §1692k(a)(2)(A);

c. All reasonable attorneys' fees, witness fees, court costs and other litigation costs incurred by Plaintiff pursuant to 15 U.S.C.

1 § 1693k(a)(3); and

2 d. Any other relief deemed appropriate by this Honorable Court.

3 **DEMAND FOR JURY TRIAL**

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5 PLEASE TAKE NOTICE that Plaintiff, CLIFFORD GATELY, demands a
6 jury trial in this case.

7 RESPECTFULLY SUBMITTED,

8
9 Date: 06/24/15

By: /s/ Craig Thor Kimmel
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